

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Tyrone D.,

Case No. 23-cv-589 (LIB)¹

Plaintiff,

v.

REPORT AND RECOMMENDATION

Kilolo Kijakazi,
Acting Commissioner of Social Security,

Defendant.

This matter comes before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court, pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636.

Plaintiff, Tyrone D. (hereinafter “Plaintiff”), initiated the present action to seek judicial review of the decision of the Commissioner of Social Security (“Defendant”) denying his application for disability benefits. (Compl. [Docket No. 1]). Plaintiff did not, however, pay the filing fee for this action or apply for in forma pauperis status.

In a letter dated March 10, 2023, the Clerk of Court instructed Plaintiff that he was required to pay the filing fee for this action or apply for in forma pauperis (“IFP”) status within fifteen days. (Letter [Docket No. 2]). The Clerk of Court forewarned Plaintiff that if he failed to do so this matter could be dismissed without prejudice. (See Id.).

¹ This matter was assigned only to the undersigned United States Magistrate Judge pursuant to Local Rule 7.2(c). Because the parties have not consented to proceed solely before a United States Magistrate Judge, however, the undersigned cannot effect dismissal of this proceeding. Accordingly, the Clerk of Court is directed to assign a District Court Judge to this proceeding consistent with this District’s ordinary assignment policies and practices for review of this Report and Recommendation.

That deadline has now passed, and Plaintiff has not paid the filing fee or applied for IFP status. In fact, Plaintiff has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, in accordance with the warning previously given to Plaintiff, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See Henderson v. Renaissance Grand Hotel, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

Therefore, based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** this action be **DISMISSED without prejudice** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: April 11, 2023

s/Leo I. Brisbois
Hon. Leo I. Brisbois
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).